

**ANSWER:**

Pursuant to Mo. Rev. Stat. §§ 355.131, 355.316 and 355.616 through 355.656 the Board has the power to do all things necessary and convenient to carry out the affairs of Health Midwest, including, without limitation, the power to merge and to sell, convey and otherwise dispose of all or any part of its property.

**INTERROGATORY NO. 91:** Identify each and every basis for asserting the authority referred to in Paragraph 27 of the Petition.

**ANSWER:**

Pursuant to Mo. Rev. Stat. § 355.656, Health Midwest has the authority to sell its assets, other than in the usual and regular course of its activities, on the terms and conditions and for the consideration determined by the Board.

**INTERROGATORY NO. 92:** Identify each name and home address of each current member of the Board of Directors and, for each, state the date on which the member joined the Board, the name and home address of each person whom the director succeeded as a member of the Board, the date on which that person joined the Board, the name and home address of the person that person succeeded as a member of the Board, and so on until each and every past and current member of the Board (and their dates of service) has been identified.

**ANSWER:**

The list of the current directors of Health Midwest as well as the directors of every other corporation in the system was provided to you on October 23, 2002. This list contained the address of each director. The date each Board member joined the Board is as follows:

| Name                   | Date  |
|------------------------|-------|
| Malcolm M. Aslin       | 04/95 |
| James S. Bower, M.D.   | 04/99 |
| Stanley N. Brand, M.D. | 04/97 |
| Richard W. Brown       | 04/84 |



|                          |       |
|--------------------------|-------|
| Bernard P. Erdman        | 06/94 |
| Frank S. Friedman        | 04/01 |
| Ronald W. Goldsmith      | 04/95 |
| John M. Holkins, M.D.    | 04/99 |
| John Graham, Jr.         | 04/01 |
| John M. McConnell        | 04/96 |
| Rodney T. Minkin         | 04/99 |
| Karen L. Pletz           | 04/99 |
| Clarence L. Roeder       | 12/89 |
| J. Stephen Scherer, M.D. | 04/97 |
| Donald R. Sloan          | 04/01 |
| Gregory C. Starks, M.D.  | 04/99 |
| Roderick L. Sturgeon     | 04/97 |
| Jack L. Sutherland       | 05/95 |
| Scott M. Westlake        | 04/98 |
| James H. Whitaker, M.D.  | 04/97 |

**INTERROGATORY NO. 93:** Describe with specificity each action of the Board

which resulted in the creation, growth and maintenance of the Health Midwest system referred to in Paragraph 28 of the Petition.

**ANSWER:**

Health Midwest registered as a nonprofit, public benefit corporation in the State of Missouri on March 7, 1979 for the purpose of perpetuating charitable, scientific and educational endeavors. These endeavors have included, among others, caring for the sick, fostering the health of the community, conducting research relating to the treatment and prevention of disease, providing medical training and education, and operating facilities for the study and care of the human body.



At the direction of its Board of Directors, Health Midwest has grown into the most complete family of health care facilities in the Kansas City metropolitan area, with 14 general acute care and behavioral health centers, 2,500 physicians and 12,000 employees. Specialty programs include clinical, health and fitness, home care and education services. The agreements by which the Board brought each hospital into the system were provided to you on October 31, 2002.

The Board of Directors of Health Midwest will continue to perpetuate charitable, scientific and educational endeavors after the sale of Health Midwest assets to HM Acquisition LLC. In addition, HM Acquisition LLC will improve those assets and expand the health care resources available to communities in greater Kansas City.

**INTERROGATORY NO. 94:** With respect to each Board member identified above, but with the exception of the Chief Executive Office of the Corporation, state the total amount by calendar year of all expenses incurred by each Board member either paid directly by the Corporation or reimbursed by the Corporation and, with respect to each such expense, state the details (date, location, amount, and reason) for the expense.

**ANSWER:**

The Health Midwest annual retreat is held at the Lake of the Ozarks and attended by Board members, as well as others. The average price per person was as follows:

2002: \$492.41  
2001: \$483.93  
2000: \$488.92

In addition, Health Midwest Board members and executives are invited to attend the Premier Governance Conference. The total annual expense for the conference is as follows:

2002: \$21,834  
2001: \$15,249  
2000: \$17,795.

**INTERROGATORY NO. 95:** With respect to each Board member identified above, identify each occasion on which the Director (or the Director's parents, siblings, siblings' spouses or children, spouse, children, children's spouses, or children's children) received



health services from or through the Corporation, and for each such occasion state the value of the services received and the amount paid by the Director for that service.

**ANSWER:**

Beginning June 1, 1999, Board members were not eligible for any type of discounted health services through Health Midwest. Prior to June 1, 1999, Board members and their family (and all medical staff members, auxiliary members of Health Midwest hospitals, and volunteers at Health Midwest hospitals) received a discount on inpatient care, outpatient care, and pharmacy products. To the extent this interrogatory seeks information protected by the physician-patient privilege, Health Midwest objects.

**INTERROGATORY NO. 96:** Identify each member of the Board of Directors who participated in the negotiation of the Asset Purchase Agreement.

**ANSWER:**

With the exception of Richard Brown, who is the president and CEO and also a member of the Board, the directors did not directly participate in the negotiation of the Agreement. Senior management, including Brown, and advisors (including Ponder and legal counsel) directly negotiated the deal and provided information to the Board which had authority to approve the terms of the deal. Members of the Board directly participated in the reverse due diligence described in Interrogatory 61. Pursuant to Mo. Rev. Stat. § 355.426 the Board is authorized to rely on reports of officers and advisors.

**INTERROGATORY NO. 97:** State the time, place and location of each meeting of the Board of Directors at which the Asset Purchase Agreement was discussed or approved, identify the votes of each Director present (voting or abstaining) on the question of whether to approve that agreement, and identify all documents which refer to, reflect, or relate in any way to the Board's evaluation of or approval of the Asset Purchase Agreement, including all notes or memoranda or other materials by, from, to, or provided to any Board member reflecting, referring to, or in any way relating to such evaluation or approval.



**ANSWER:**

The Agreement was discussed at the meetings of the Board on August 6, 2002, September 10, 2002 and October 15, 2002. The minutes of these meetings, showing who was present and how they voted, were previously provided to you on October 31, 2002.

**INTERROGATORY NO. 98:** Identify every Director from 1990 to the present who was or is employed, or whose parent, sibling, sibling's spouse, sibling's child, spouse, child, child's spouse, or child's child was or is employed, by the Corporation, HCA, or any other bidder or potential bidder for the Corporation's assets, or any other health care provider whatsoever.

**ANSWER:**

None of the existing directors or their family members are directors or officers of HCA or its subsidiaries. To the best knowledge of Health Midwest, none of the existing directors or their family members are employed by HCA. Disclosure statements of the directors with respect to the HCA transaction are attached as **Exhibit 20**. In addition, Health Midwest has a conflict of interest policy that requires the directors to disclose any potential conflicts of interest they or their family members might have. No directors disclosed any employment for themselves or their family members with any of the bidders.

**INTERROGATORY NO. 99:** Identify every Director from 1990 to the present who has or had an ownership interest, or whose parent, sibling, sibling's spouse, sibling's child, spouse, child, child's spouse, or child's child has or had an ownership interest, of any kind in the Corporation, HCA, or any other bidder or potential bidder for the Corporation's assets, or any other health care provider whatsoever.

**ANSWER:**

None of the existing directors or, to the best of their knowledge, their family members directly owns any stock in HCA. Disclosure statements of the directors with respect to the HCA transaction are attached as **Exhibit 20**. In addition, Health Midwest has a conflict of interest policy that requires the directors to disclose any potential conflicts of interest they or their



family members might have. No directors disclosed any ownership interest for themselves or their family members with respect to any of the bidders.

**INTERROGATORY NO. 100:** Identify every Director from 1990 to the present who has or had a contract for goods or services, or whose parent, sibling, sibling's spouse, sibling's child, spouse, child, child's spouse, or child's child has or had a contract for goods or services, either directly or indirectly (through being an employee or a holder of an ownership interest of any kind in an entity with a contract for goods or services or otherwise) with the Corporation, HCA, or any other bidder or potential bidder for the Corporation's assets, or any other health care provider whatsoever.

**ANSWER:**

None of the existing directors or, to the best of their knowledge, their family members directly owns any stock in any entity they know is a significant vendor, supplier or contractor with HCA or otherwise does business with HCA. Disclosure statements of the directors with respect to the HCA transaction are attached as **Exhibit 20**. In addition, Health Midwest has a conflict of interest policy that requires the directors to disclose any potential conflicts of interest they or their family members might have. No directors disclosed any contractor relationships with HCA or with respect to any of the bidders.

**INTERROGATORY NO. 101:** Identify every current written employment contract between the Corporation and any individual, and all prior such contracts from 1990 to the present day, and, for each, identify the date, time and place of the meeting of the Board of Directors at which such contract was authorized, ratified or approved, and identify the votes of each Director present (voting and abstaining) with respect to such authorization, ratification, or approval.

**ANSWER:**

All current written employment contracts with Health Midwest were previously provided to you on November 14, 2002. Executive Compensation Committee minutes approving executive



compensation were delivered to you on the same date. Executive Compensation Committee minutes approving the senior vice presidents are attached as **Exhibit 22**. To the extent this interrogatory seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine, Health Midwest objects.

**INTERROGATORY NO. 102:** Identify all documents reflecting, referring to, or relating in any way to the negotiation of or the terms of the employment contracts identified above, including any document analyzing or evaluating the amount of compensation provided for in such contracts and the value of services to be provided, including all notes or memoranda or other materials by, from, to, or provided to any Board member reflecting, referring to, or in any way relating to such compensation.

**ANSWER:**

All documents, including executive meeting minutes, related to the employment contracts identified above are attached as **Exhibit 22**. To the extent this interrogatory seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine, Health Midwest objects

**INTERROGATORY NO. 103:** Identify all correspondence with, or any other communication with, the Internal Revenue Service regarding the contracts identified above or the compensation terms therein, and identify all studies performed by experts or other third parties at the request of the Corporation with respect to the contracts identified above or the compensation terms therein and the positions of the Internal Revenue Service with respect to such contracts and terms generally or specifically.

**ANSWER:**

Clark/Bardes Consulting ("Clarke/Bardes"), a nationally recognized healthcare compensation consultant, prepared Fairness Opinions regarding Health Midwest executive's compensation in 2001. These opinions were provided to you on November 14, 2002. Beginning in August of 2002, Clark/Bardes was asked to perform an assessment and provide a report regarding whether changes in executive benefits as a result of the sale would be reasonable.



Clarke/Bardes recommended certain changes to retirement benefit plans and concluded that such changes were reasonable and within the bounds of competitive practice of comparable health care organizations. This report is attached as **Exhibit 26**.

**INTERROGATORY NO. 104:** Identify all individuals who, by the terms of contracts entered into with the Corporation, will receive any compensation of any kind if HCA does not assume or continue their employment or continues their employment but discontinues such employment before the contract expires by its terms, and describe the amounts of such compensation and the circumstances in which it would be received.

**ANSWER:**

A memorandum titled Summary of Employment Contracts with Severance Provisions was previously provided to you on October 31, 2002. This memorandum details the information requested above. With the exception of Richard W. Brown, all executives will be provided employment with HCA. To the extent that HCA subsequently terminates their employment, HCA and not Health Midwest will be required to pay such severance.

**INTERROGATORY NO. 105:** Identify all individuals or entities whose compensation would be increased in any respect and for any reason in whole or in part if the sale to HCA is consummated, and describe the amounts of such increases and the circumstances in which it would be received.

**ANSWER:**

As a result of the sale to HCA, Health Midwest executives are at risk of losing many of the retirement benefits already promised to them by Health Midwest. Health Midwest has an obligation to honor those promises and therefore developed a plan that would allow Health Midwest to carry through on its promise to provide the executive with retirement benefits despite the sale of assets. Individuals included in this plan include:

Gaylia Bond  
Michael Chappelow  
Thomas Cranshaw



Kevin Hicks  
J. Kent Howard  
Max Jackson, M.D.  
Darrell Moore  
Steve Newton  
Patrick Patterson  
Barry Seward  
Steven Wilkinson  
Thomas J. Langenberg  
Joseph Hiersteiner  
Linda Ward  
James Strieby

Details regarding the compensation are included in the Clark/Bardes report attached as **Exhibit 26**.

**INTERROGATORY NO. 106:** Identify all individuals or entities whose compensation would be decreased in any respect and for any reason in whole or in part if the sale to HCA is not consummated, and describe the amounts of such decreases and the circumstances in which it or they would occur.

**ANSWER:**

Health Midwest is unaware of any individual or entity, other than Ponder, whose compensation would be decreased if the sale to HCA is not consummated. Payment to Ponder is subject, in part, upon consummation of the transaction. Ponder's payment schedule is further detailed in the engagement letter between Health Midwest and Ponder attached as **Exhibit 8**.

**INTERROGATORY NO. 107:** Identify with specificity each and every basis for the allegation that the Attorney General's review of the proposed sale of the Corporation's assets is limited in the manner referred to in Paragraph 29 of the Petition.

**ANSWER:**

The law governing nonprofit corporations under Chapter 355 of the Missouri Revised Statutes, as well as decided case law on issues of corporate governance in Missouri. Those authorities



hold, in general, that the inquiry beyond that defined by statute is limited to factors involved in the business judgment rule.

**INTERROGATORY NO. 108:** Identify the date, time, place and verbatim contents (as nearly as possible) of each statement by the Attorney General referred to in the first sentence of Paragraph 30 of the Petition.

**ANSWER:**

On or about November 24, 2002, an authorized representative of the Missouri Attorney General stated that the twenty day review period for the sale would not run until, "sufficient information has been given," to the attorney general's office to allow him to "reach a conclusion as to whether the sale is in the best interest of the public," as quoted in the Kansas City Star.

On or about November 18, 2002, the Missouri Attorney General stated, "I have no box to check and say yes or no on this deal. The 20-day time period just provides me with the time I need to take my legal tools out of the woodshed if (the acquisition) is not the best deal for the community," as quoted in the Kansas City Business Journal.

An authorized representative of the Missouri Attorney General stated that because of its status as a nonprofit, Health Midwest, "holds (its) assets in trust for the benefit of those served," and that Health Midwest is charged with showing the sale is fair "from the view of the beneficiaries," on or about November 9, 2002, as quoted in the Kansas City Star.

The Missouri Attorney General stated "The Health Midwest hospital system is an essential player in the health care delivery system in Kansas City, and steward to hundreds of millions of dollars of nonprofit assets created by and for the communities it serves. I intend to exercise the authority of my office to protect the public and these charitable assets in this transaction," on or about October 31, 2002, as quoted in the Health Law Reporter.

The Missouri Attorney General represented that the Board of Health Midwest must show that Health Midwest could not long survive as a nonprofit corporation, and that the Board must also show that the newly created foundation will, as closely as possible, continue the charitable mission of Health Midwest on or about November 12, 2002, as mentioned in the Kansas City Star Business Weekly.

An authorized representative of the Missouri Attorney General represented that a nonprofit's board is not free to sell its assets unless it can show the sale is in the best interest of those it serves and that to do that, the nonprofit has to prove it has become impossible or impracticable



for it to continue its charitable mission on or about November 9, 2002, as mentioned in the Kansas City Star.

The Attorney General or an authorized representative thereof stated that the assets of Health Midwest accumulated for its charitable purposes must be used for that charitable purpose in perpetuity on or about November 14, 2002, as mentioned in a press release from the Attorney General's office.

In addition to these specific statements, the Attorney General has made numerous other statements, in transcripts of public hearings and press releases from his office, that are available on the Attorney General's own website. Further, similar comments to those mentioned above and in the materials on the Attorney General's website mirror numerous undocumented comments made to representatives of Health Midwest during the many discussions between the Attorney General's office and Health Midwest.

**INTERROGATORY NO. 109:** Identify the date, time, place and verbatim contents

(as nearly as possible) of each indication given by the Attorney General referred to in the second sentence of Paragraph 30 of the Petition.

**ANSWER:**

The Missouri Attorney General stated "The Health Midwest hospital system is an essential player in the health care delivery system in Kansas City, and steward to hundreds of millions of dollars of nonprofit assets created by and for the communities it serves. I intend to exercise the authority of my office to protect the public and these charitable assets in this transaction," on or about October 31, 2002, as quoted in the Health Law Reporter.

In addition to these specific statements, the Attorney General has made numerous other statements, in transcripts of public hearings and press releases from his office, that are available on the Attorney General's own website. Further, similar comments to those mentioned above and in the materials on the Attorney General's website mirror numerous undocumented comments made to representatives of Health Midwest during the many discussions between the Attorney General's office and Health Midwest.

**INTERROGATORY NO. 110:** Describe with specificity the Corporation's

understanding of the phrase "public assets" as that phrase is used in Paragraph 31 of the Petition and attributed to the Attorney General.



**ANSWER:**

At the public hearing conducted by the Attorney General on November 18, 2002, the Attorney General said the proceeds from the proposed sale "represent this public, this public's equity in these hospitals. And as I have said before and will say again, these assets do not belong to the board or the executives of Health Midwest." Health Midwest takes them and other similar statements to mean that the Attorney General believes that the public or the government owns these proceeds and not Health Midwest. In addition, Health Midwest understands that the term "public assets," as it has been used by the Attorney General, to refer to the assets held by a charitable trust under Missouri law. Health Midwest is not a charitable trust.

**INTERROGATORY NO. 111:** Identify with specificity each and every basis for the

allegation that the Corporation's assets are not "public assets" as that phrase is used in

Paragraph 31 of the Petition and attributed to the Attorney General.

**ANSWER:**

Section 355.131, RSMo, states that a nonprofit corporation has the power "in its corporate name . . . to own, hold, improve, use, and otherwise deal with, real or personal property . . ." In addition, the law governing nonprofit corporations under Chapter 355 of the Missouri Revised Statutes, as well as decided case law on issues of corporate structure and function in Missouri.

**INTERROGATORY NO. 112:** Identify with specificity each and every action by the

Attorney General that has "adversely affected, and continue[s] to affect, Health Midwest's

ability to conduct its ongoing business and operations" as referred to in Paragraph 32 of the

Petition.

**ANSWER:**

Public assertions by the Attorney General have interfered with its ongoing business and operations, which includes the negotiation and finalization of a sale of its assets. These include specific assertions by the Attorney General in his Press Releases of November 14, 2002, and November 24, 2002 that he has the power to approve or disprove the sale between Health Midwest and HCA, the other specific assertions referenced in these interrogatories, and also includes numerous other undocumented statements by the Attorney General or his representatives to Health Midwest that the sale will not be permitted to close until they approve the sale of Health Midwest assets.



**INTERROGATORY NO. 113:** Identify with specificity each and every action by the Attorney General that has "adversely affected, and continue[s] to affect, Health Midwest's ability to ... consummate the sale of its assets" as referred to in Paragraph 32 of the Petition.

**ANSWER:**

Public assertions by the Attorney General have cast doubt on the ability of Health Midwest to consummate the sale of its assets. These include specific assertions by the Attorney General in his Press Releases of November 14, 2002, and November 24, 2002 that he has the power to approve or disprove the sale between Health Midwest and HCA, the other specific assertions mentioned on numerous previous occasions in these interrogatories, and also includes numerous other undocumented statements by the Attorney General or his representatives to Health Midwest that the sale will not be permitted to close until the Attorney General approves the sale of Health Midwest assets.

**INTERROGATORY NO. 114:** Describe with specificity the adverse impact, and continuing effect, of the actions attributed to the Attorney General in Paragraph 32 of the Petition on the Corporation's ongoing business and operations.

**ANSWER:**

The statements of the Attorney General, as well as those of the Attorney General of the State of Kansas, create uncertainty as to the activities that Health Midwest may pursue in conducting its ongoing business and operations, which includes the decision to sell its assets. Health Midwest is uncertain about whether, by conducting its ongoing business and consummating the sale under the threat of these competing claims, it would be subjecting the corporation to claims of liability. The claims of authority and conflicting requests of the Attorneys General place Health Midwest between a rock and a hard place and hampers Health Midwest's effort to continue to exercise its business judgment, conduct its business in the best interests of the corporation and consummate the sale of Health Midwest assets at a premium price. In addition, the Attorney General has encouraged certain hospital foundations to separate themselves from Health Midwest in anticipation of the sale.

**INTERROGATORY NO. 115:** Describe with specificity the adverse impact, and continuing effect, of the actions attributed to the Attorney General in Paragraph 32 of the Petition on the Corporation's ability to consummate the sale of its assets.



**ANSWER:**

The statements of the Attorney General, as well as those of the Attorney General of the State of Kansas, create a conflict that cannot be resolved by Health Midwest and thus are preventing Health Midwest from consummating the sale of its assets. Health Midwest is uncertain whether its consummation of the sale under the threat of these competing claims would expose the corporation to liability.

**INTERROGATORY NO. 116:** Identify the date, time and location of every meeting of the Board of Directors at which the actions attributed to the Attorney General referred to in Paragraph 32 of the Petition, or their alleged effects, was discussed or evaluated, and identify all documents which refer to, reflect, or relate in any way to these actions or their alleged effects, including all notes or memoranda or other materials by, from, to, or provided to any Board member reflecting, referring to, or in any way relating to such actions or their alleged effects.

**ANSWER:**

The actions of the Attorney General were discussed at the November 25, 2002 Board of Directors meeting and the December 3, 2002 Board of Directors meeting. A copy of the November 25, 2002 Board meeting minutes are attached as **Exhibit 1**. In addition, the actions were discussed at executive committee meetings on November 21 and 22, 2002.

**INTERROGATORY NO. 117:** Identify every action taken by the Board of Directors in response to or in any way related to the actions attributed to the Attorney General referred to in Paragraph 32 of the Petition or their alleged effects and, with respect to each such action, identify the votes of each Director present (voting or abstaining) on each such action.

**ANSWER:**

The statements of the Attorney General, as well as those of the Attorney General of the State of Kansas, created a conflict and uncertainty as to whether Health Midwest can consummate the sale of its assets without potentially exposing the corporation to claims of liability. After being fully advised of the facts and circumstances surrounding the conflict, and



seeing no other viable option, the Board unanimously approved the filing of a lawsuit in Missouri and Kansas. The minutes of the November 25, 2002 meeting are attached as Exhibit 1.

**INTERROGATORY NO. 118:** Identify with specificity each and every basis for the allegation in Paragraph 34 of the Petition.

**ANSWER:**

The law governing nonprofit corporations under Chapter 355 of the Missouri Revised Statutes, as well as the decided case law on issues of corporate governance in Missouri. The Attorney General's statement on or about November 18, 2002, to the Kansas City Business Journal referred to in the answer to Interrogatory No. 14 indicates that they Attorney General himself agrees with the allegations contain in paragraph 34 of the Petition.

**INTERROGATORY NO. 119:** State with specificity each and every interest of the Attorney General which the Corporation asserts is adverse to the interests of the Corporation as referred to in Paragraph 35 of the Petition.

**ANSWER:**

The Attorney General asserts that he has the power to approve or disapprove of the sale of Health Midwest assets and may prevent the sale if he alone is unsatisfied with the terms of the sale. Health Midwest disagrees with these assertions. The terms and conditions of the sale are subject to approval by the Board. The Attorney General's review is limited to ensuring that the Board acted within the Business Judgment Rule in approving the terms and conditions of the sale.

**INTERROGATORY NO. 120:** State with specificity each and every interest of the Corporation which the Corporation asserts is adverse to the interests of the Attorney General as referred to in Paragraph 35 of the Petition.

**ANSWER:**

The Attorney General asserts that he has the power to approve or disapprove of the sale of Health Midwest assets and may prevent the sale if he alone is unsatisfied with the terms of the sale. Health Midwest disagrees with these assertions. The terms and conditions of the sale are subject to approval by the Board. The Attorney General's review is limited to ensuring that



the Board acted within the Business Judgment Rule in approving the terms and conditions of the sale.

**INTERROGATORY NO. 121:** Describe with specificity the negotiations which resulted in the provisions of the Asset Purchase Agreement agreed to by the Corporation giving HCA the right to walk away from the transaction if the sale is not closed by March 31, 2003, as referred to in Paragraph 37 of the Petition, and identify all documents referring to, reflecting, or relating to such negotiations or such provision.

**ANSWER:**

Health Midwest originally proposed a June 30, 2003 termination date upon the buyer's obligation to close. (See Section 12.2(a), page 32 of August 7, 2002 draft Asset Purchase Agreement.) This was accepted in Tenet's original response on September 5, 2002. HCA's initial 9/5/02 response bracketed this proposed outside date for closing, indicating an issue, but made no proposal. Tenet's 10/8/02 proposal continued to accept this outside date for closing. (See Section 12.1, page 47 of 10/8/02 Tenet draft APA.) HCA's 10/8/02 proposal required a March 31, 2003 outside date for closing. (See Section 12.1(a), page 38 of 10/8/02 HCA draft APA.)

On 10/21/02, Health Midwest proposed a compromise which accepted HCA's 3/31/03 outside date for closing with an extension to 6/30/03 if the Federal Trade Commission makes a second request for documentation in response to the Health Midwest and HCA filings under the Hart-Scott-Rodino ("H-S-R") Premerger Notification Act. (See 12.1(a), page 55 of Health Midwest 10/21/02 draft APA.) HCA rejected this proposal. (See 12.1(a), pages 41-42 of 11/2/02 HCA draft APA.)

Health Midwest made a more aggressive proposed extension to 8/31/03 for an H-S-R second request, subject to addition of a Material Adverse Change condition to closing if the H-S-R second request delayed closing beyond 5/31/03. (See 9.9, page 53 and 12.1(a), page 59 of HM 11/6/02 draft APA.) This proposal was accepted by HCA, except that it modified the Material Adverse Change condition to closing so that it came into effect if the H-S-R second request extended the closing date beyond March 31, 2003. (See Sections 9.9 and 12.1(a) of HCA 11/12/02 draft APA.) This final proposal was accepted by Health Midwest as reflected in the remaining drafts of the APA. (See Sections 9.9 and 12.1(a) of the 11/16/02, 11/19/02, 11/20/02 and 11/21/02 drafts of the APA.)

Some fine tuning of the specific language of the material adverse change clause appears in these later drafts. It clarifies that although HCA may not exercise the material adverse change



reason for not closing until after 3/31/03, the material adverse change is determined based upon events after the 11/22/02 APA signing date.

**INTERROGATORY NO. 122:** Describe each and every circumstance that supports the Corporation's allegation that "the sale by Health Midwest to HCA must be completed as soon as possible in order to guarantee payment of the full contract price" as set forth in Paragraph 36 of the Petition.

**ANSWER:**

Pursuant to the terms of the Agreement, HCA may refuse to close without penalty if Health Midwest is not prepared to close by March 31, 2003. Additionally, based on Health Midwest's deteriorating financial performance net working capital is likely to decrease on a daily basis. Thus, every day closing is delayed and losses are incurred the reduction under section 2.61 increases. Further, under section 2.2(i) cash is an excluded asset. If Health Midwest loses money prior to the closing date, that money is subtracted from the cash asset.

**INTERROGATORY NO. 123:** Identify with specificity each and every action by the Attorney General that the Corporation believes constitutes a contention "that the Board intends to use the proceeds of the sale in any manner inconsistent with its valid, authorized purposes" as referred to in Paragraph 44 of the Petition.

**ANSWER:**

The contentions made by the Attorney General that he has authority to disrupt, interfere with, or prevent the sale of assets by Health Midwest. These contentions have been documented in numerous other interrogatory answers, including Nos. 14, 108, and 109.

**INTERROGATORY NO. 124:** Identify all documents reflecting, referring to or in any way relating to the Board's November 15th proposal for creation of a new foundation.

**ANSWER:**

November, 2002 Board meeting minutes will be provided as soon as they are available. The minutes from November 25, 2002 are attached as **Exhibit 1**.



**INTERROGATORY NO. 125:** Describe the basis, for Health Midwest spokesperson Laurie Roberts' statement that the Board of Health Midwest considered a number of models for the foundation. Describe all models considered and identify all documents reflecting, referring or relating in any way to the board's consideration of other models.

**ANSWER:**

The Executive Committee considered a variety of alternative structures for the foundation, including the structure presented to the Attorney General.

**INTERROGATORY NO. 126:** Identify with specificity each and every action by the Attorney General that the Corporation believes constitutes a contention "that he has the power to dictate the manner in which the proceeds of the sale will be used" as referred to in Paragraph 44 of the Petition.

**ANSWER:**

On or about November 18, 2002, the Missouri Attorney General stated, "I have no box to check and say yes or no on this deal. The 20-day time period just provides me with the time I need to take my legal tools out of the woodshed if (the acquisition) is not the best deal for the community," as quoted in the Kansas City Business Journal.

On or about November 15, 2002, an authorized representative of the Missouri Attorney General stated, "The review usually takes place within that 20-day time period. But if we have resolvable concerns, it probably could be something that would go a little longer," as quoted in the Kansas City Business Journal.

The Missouri Attorney General stated "The Health Midwest hospital system is an essential player in the health care delivery system in Kansas City, and steward to hundreds of millions of dollars of nonprofit assets created by and for the communities it serves. I intend to exercise the authority of my office to protect the public and these charitable assets in this transaction," on or about October 31, 2002, as quoted in the Health Law Reporter.

The Missouri Attorney General represented that the Board of Health Midwest must show that Health Midwest could not long survive as a nonprofit corporation, and that the Board must also



show that the newly created foundation will, as closely as possible, continue the charitable mission of Health Midwest on or about November 12, 2002, as mentioned in the Kansas City Star Business Weekly.

An authorized representative of the Missouri Attorney General represented that a nonprofit's board is not free to sell its assets unless it can show the sale is in the best interest of those it serves and that to do that, the nonprofit has to prove it has become impossible or impracticable for it to continue its charitable mission on or about November 9, 2002, as mentioned in the Kansas City Star.

The Attorney General or an authorized representative thereof stated that the Attorney General has the authority to reject the sale of Health Midwest's assets on or about November 14, 2002, as mentioned in a press release from the Attorney General's office.

In addition to these specific statements, the Attorney General has made numerous other contentions, in transcripts of public hearings and press releases from his office, that are available on the Attorney General's own website. Further, similar contentions to those mentioned above and in the materials on the Attorney General's website mirror numerous undocumented contentions made to representatives of Health Midwest during the many discussions between the Attorney General's office and Health Midwest.

**INTERROGATORY NO. 127:** Identify with specificity each and every action or

statement by the Attorney General referred to in Paragraphs 45-47 of the Petition.

**ANSWER:**

On or about November 24, 2002, an authorized representative of the Missouri Attorney General stated that the twenty day review period for the sale would not run until, "sufficient information has been given," to the attorney general's office to allow him to "reach a conclusion as to whether the sale is in the best interest of the public," as quoted in the Kansas City Star.

On or about November 18, 2002, the Missouri Attorney General stated, "I have no box to check and say yes or no on this deal. The 20-day time period just provides me with the time I need to take my legal tools out of the woodshed if (the acquisition) is not the best deal for the community," as quoted in the Kansas City Business Journal.

On or about November 15, 2002, an authorized representative of the Missouri Attorney General stated, "The review usually takes place within that 20-day time period. But if we have resolvable concerns, it probably could be something that would go a little longer," as quoted in the Kansas City Business Journal.



An authorized representative of the Missouri Attorney General stated that because of its status as a nonprofit, Health Midwest, "holds (its) assets in trust for the benefit of those served," and that Health Midwest is charged with showing the sale is fair "from the view of the beneficiaries," on or about November 9, 2002, as quoted in the Kansas City Star.

The Missouri Attorney General stated "The Health Midwest hospital system is an essential player in the health care delivery system in Kansas City, and steward to hundreds of millions of dollars of nonprofit assets created by and for the communities it serves. I intend to exercise the authority of my office to protect the public and these charitable assets in this transaction," on or about October 31, 2002, as quoted in the Health Law Reporter.

The Missouri Attorney General represented that the Board of Health Midwest must show that Health Midwest could not long survive as a nonprofit corporation, and that the Board must also show that the newly created foundation will, as closely as possible, continue the charitable mission of Health Midwest on or about November 12, 2002, as mentioned in the Kansas City Star Business Weekly.

An authorized representative of the Missouri Attorney General represented that a nonprofit's board is not free to sell its assets unless it can show the sale is in the best interest of those it serves and that to do that, the nonprofit has to prove it has become impossible or impracticable for it to continue its charitable mission on or about November 9, 2002, as mentioned in the Kansas City Star.

An authorized representative of the Missouri Attorney General encouraged the Research Foundation to speedily move forward with the process of separating itself from Health Midwest in anticipation of the transfer of Research Medical Center and its related entities on or about November 19, 2002, at a meeting of the Board of Directors of the Research Foundation.

An authorized representative of the Missouri Attorney General encouraged the Baptist Lutheran Medical Center Foundation to consider whether it has an equitable claim to part of the proceeds of the sale of Health Midwest assets and whether the Foundation should seek independence and separation from Health Midwest and even to demand separation or independence if necessary on or about November 13, 2002 at a meeting of the Board of Directors of the Baptist Lutheran Medical Center Foundation.

The Attorney General or an authorized representative thereof stated that the Attorney General has the authority to reject the sale of Health Midwest's assets on or about November 14, 2002, as mentioned in a press release from the Attorney General's office.

In addition to these specific statements, the Attorney General has made other statements, in transcripts of public hearings and press releases from his office, that are available on the Attorney General's website. Further, similar comments to those mentioned and in the materials on the Attorney General's website mirror numerous undocumented comments made